

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Part 90
of the Commission's Rules
to Adopt Regulations for Automatic
Vehicle Monitoring Systems

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PR Docket No. 93-61

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**REPLY COMMENTS OF THE CONSUMER ELECTRONICS GROUP
OF THE ELECTRONIC INDUSTRIES ASSOCIATION**

The Consumer Electronics Group of the Electronic Industries Association ("EIA/CEG") hereby replies to the comments and oppositions that were filed in response to the petitions for reconsideration of the Commission's *Report and Order* in the above-captioned proceeding on May 24, 1995.¹

EIA/CEG urges the Commission to deny those petitions that would eviscerate the "safe harbor" created for Part 15 devices by conditioning it on the physical distance between Part 15 devices and Location and Monitoring Service ("LMS") systems. These petitions are totally inconsistent with the underlying goal of a safe harbor; namely, to preserve some degree of open access to the 902-928 MHz band by Part 15 devices. The Commission should also deny those petitions that have argued that the agency adopted -- without proper notice -- the safe harbor for, and the requirement that new multilateration LMS systems test for interference to, Part 15 devices. Both of these requirements are a logical consequence of the Commission's

¹ See *Regulations for Automatic Vehicle Monitoring Systems*, Report and Order, PR Docket No. 93-61, FCC 95-41 (released Feb. 6, 1995) [hereinafter "*Report and Order*"].

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initial -- and clearly announced -- proposal to accommodate both Part 15 and LMS operations in the 902-928MHz band.

I. INCORPORATING A "DISTANCE VARIABLE" IN THE COMMISSION'S SAFE HARBOR FOR PART 15 DEVICES RULE WOULD EVISCERATE THAT RULE.

Section 90.361 states that Part 15 devices presumptively do not interfere with multilateration LMS systems if the antennas of these devices are deployed within certain parameters (e.g., indoors).² As EIA/CEG explained in its recent comments on the pending petitions for reconsideration, this safe harbor unambiguously defines the parameters within which Part 15 manufacturers can develop and market products without fear of those devices being rendered useless by interference complaints from co-channel multilateration LMS systems.³ In doing so, the safe harbor creates regulatory certainty for the users and manufacturers of Part 15 devices. Commenters representing both users and manufacturers of these devices have uniformly supported the Commission's efforts towards this end.⁴

Two LMS parties, in addition to asking the Commission to undo the conclusive presumption of non-interference which defines the safe harbor, have requested -- in the alternative -- that an undefined "distance variable" be incorporated into the Commission's

² See *Report and Order*, Appendix A at § 90.361.

³ See Comments of EIA/CEG, PR Docket No. 93-61, at 4 (filed May 24, 1995) [hereinafter "EIA/CEG Comments"].

⁴ See, *e.g.*, Comments of Ad Hoc Gas Distribution Utilities Coalition, PR Docket No. 93-61, at 5-8 (filed May 24, 1995); Comments of AT&T Corp., PR Docket No. 93-61, at 3 (filed May 24, 1995); Opposition of the Part 15 Coalition, PR Docket No. 93-61, at 6-9 (filed May 24, 1995).

antenna placement rules for both outdoor and indoor Part 15 antennas. In particular, these parties argue that the presumption of non-interference should not apply if Part 15 devices are within a certain, unspecified distance of LMS operations.⁵ The Commission should reject both of these requests.

Without a conclusive presumption of non-interference, users and manufacturers of Part 15 devices will be deprived of the certainty of continued operations which they need. The petitioners' "distance variable" alternative leads to the same result. As a consequence, their "alternative" request for relief is really no alternative at all. The essence of a safe harbor is that it allows manufacturers to develop, and users to operate, Part 15 devices in any geographic location, albeit subject to antenna limitations. Injecting a physical distance requirement would make uncertain the now well-defined boundary of the safe harbor. Part 15 devices could no longer be considered available for ubiquitous use, and could be rendered unusable -- on a seemingly random basis -- in areas proximate to an LMS site. Moreover, the uncertainty which a "distance variable" would create could threaten the integrity of the safe harbor altogether as LMS operations proliferate. Such a result would make the safe harbor meaningless and should therefore be rejected.

⁵ Opposition of Pinpoint Communications, Inc., PR Docket No. 93-61, at 13 (filed May 24, 1995); Petition for Reconsideration of Uniplex Corporation, PR Docket No. 93-61, at 8 (filed Apr. 24, 1995).

II. THE PROTECTIONS AFFORDED PART 15 DEVICES ARE BOTH A LOGICAL AND AN IMPERATIVE OUTGROWTH OF THE COMMISSION'S INITIAL PROPOSAL IN THIS PROCEEDING.

In their comments and oppositions, several multilateration LMS parties continue to argue that the Commission adopted the safe harbor and the companion requirement that new LMS licensees test for interference to Part 15 devices⁶ without giving adequate notice.⁷ As EIA/CEG has previously demonstrated,⁸ no party can reasonably argue that the Commission failed to give adequate notice of its intention to preserve Part 15 access to the 902-928 MHz band. In an erratum to its *Notice of Proposed Rule Making* in this proceeding, the Commission specifically stated that it sought to accommodate Part 15 and LMS interests "short of" removing Part 15 devices from the band.⁹ Nothing the LMS parties have said rebuts (or could rebut) this fact.¹⁰

⁶ See *Report and Order*, Appendix A at § 90.353(a)(4).

⁷ Opposition of Pinpoint Communications, Inc., PR Docket No. 93-61, at 8 (filed May 24, 1995); Opposition of Airtouch Teletrac, PR Docket No. 93-61, at 3 (filed May 24, 1995). See also Petition for Reconsideration of Southwestern Bell Mobile Systems, Inc., PR Docket No. 93-61, at 7-9 (filed Apr. 24, 1995).

⁸ See EIA/CEG Comments at 5-6.

⁹ *Regulations for Automatic Vehicle Monitoring Systems*, Erratum to Notice of Proposed Rule Making, PR Docket No. 93-61, DA 93-516 (released May 5, 1993).

¹⁰ Indeed, the fact that Airtouch Teletrac did not address the notice issue in its petition for reconsideration, but only in its second-round comments, indicates that Airtouch considered the Commission's notice to be adequate.

The question, then, is whether the Commission's effectuation of this proposal -- through its safe harbor and testing requirement -- is a logical outgrowth of the *Notice*.¹¹ As is widely recognized, such a question is inherently fact-specific.¹² The critical fact here is that both the safe harbor and testing requirement are not only logical, but also necessary outgrowths of the Commission's proposal to limit interference between LMS and Part 15 devices "short of" removing Part 15 operations from the 902-928 MHz band. Simply stated, the Commission could not have achieved its goal of preserving access to the 902-928 MHz band for Part 15 devices without enacting these two provisions, or provisions of similar effect. As EIA/CEG has previously noted,¹³ any weakening of the safe harbor or testing requirement would threaten the continued operation of Part 15 devices in this band.

In sum, the Commission's early stated goal in this proceeding necessarily implicated an accommodation of Part 15 devices along the lines ultimately adopted by the Commission. In such circumstances, the courts have found that interested parties were given adequate notice of any agency's ultimate actions. The Commission should so find here.

¹¹ See *Aeronautical Radio, Inc. v. FCC*, 923 F.2d 428, 445-46 (D.C. Cir. 1991) (upholding the adequacy of the Commission's notice, but remanding in part on other grounds).

¹² See Kenneth C. Davis & Richard J. Pierce, Jr., *Administrative Law Treatise*, vol. 1 at 301 (3d ed. 1994).

¹³ See EIA/CEG Comments at 2-6.

III. CONCLUSION

For all of the reasons set forth above and its earlier filed comments, EIA/CEG urges the Commission to deny those petitions that would threaten the ability of Part 15 devices to operate in the 902-928 MHz band and to reject the arguments that its safe harbor and testing requirements were adopted without adequate notice.

Respectfully submitted,

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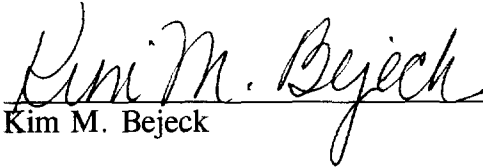
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